S.B. CIVIL WRIT PETITION NO.3972/2007
LR of Basti Ram
vs
The State of Rajasthan & Ors.

Date of order : 12.9.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Vijay Agarwal, for the petitioner.
Mr. RK Singhal, for the respondent.

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At the request of learned counsel for the parties the writ petition is heard finally.

The grievance of the petitioner is that petitioner applied for sanction of one additional *Naka* and water course also. That prayer was allowed by the Executive Engineer vide order dated 29th Set., 2006. The respondents nos. 4 to 6 preferred an appeal against the order dated 29th Sept., 2006. That appeal was allowed by the Superintending Engineer vide order dated 13th June, 2007. The petitioner is aggrieved against the order dated 13th June, 2007.

It appears from the facts of the case that the Superintending Engineer, CAD, Srivijaynagar vide order dated 13th June, 2007 held that the Executive Engineer did not technically examined all the aspects of the matter before granting facility to the petitioner vide order dated 29th Sept., 2006. The respondents' contention was that their *Dhani* is situated in Murabba No.191/352 at Killa No.4 and if the water course is opened then because of the seepage, their

Dhani may damage. Learned Superintending Engineer allowed the appeal only on the ground that matter was not examined by the Executive Engineer technically. If the matter was not examined technically then neither the application could have been allowed nor it could have been rejected. The application of the applicant-petitioner could not have been rejected without any reason and without holding that petitioner is not entitled for the relief. In that situation, the matter should have been remanded by the Superintending Engineer to the Executive Engineer for examining the matter in all respects before passing the order of opening of *Naka* and water course whatever that may be. This order could have been passed after giving an opportunity of hearing to the respondents nos. 4 to 6.

In view of the above reasons, the writ petition deserves to be allowed only on above ground, hence, the writ petition of the petitioner is allowed. The order of the Superintending Engineer dated 13th June, 2007 as well as the order of the Executive Engineer dated 29th Sept., 2006 are set aside and the matter is remanded back to the Executive Engineer for deciding the application of the petitioner-applicant in accordance with law after giving opportunity of hearing to the respondents nos. 4 to 6.

Learned counsel for the respondents nos. 4 to 6 submitted that in the garb of the interim order passed by this Court on 5th July, 2007, the petitioner broke down the *Naka* and for that an FIR

has been lodged by the respondents against the petitioner. That event is a separate cause, may have criminal liability of the guilty persons, but is not subject matter in this writ petition and cannot be a subject matter in the present writ petition. The investigating agency will examine the matter and will find out whether any offence was committed by the accused persons or not. The investigating agency shall not be influenced by any observation made by this Court in this writ petition as the subject matter is entirely different.

Both the parties shall appear before the Executive Engineer on 17th Sept., 2007. The Executive Engineer shall decide the matter by or before 30th Sept., 2007.

(PRAKASH TATIA), J.

c.p.goyal/-